

REPRESENTATIVE FOR PETITIONER:
Joseph R. Caracci, *Pro se*

REPRESENTATIVE FOR RESPONDENT:
Jack C. Birch, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | |
|--------------------------------|---|-----------------------------|
| JOSEPH R. CARRACCI 1998 TRUST, |) | Petition No. |
| |) | 43-023-14-1-5-00003 |
| Petitioner, |) | 43-023-15-1-5-00184-15 |
| |) | 43-023-16-1-5-01902-16 |
| |) | |
| v. |) | Parcel No. |
| |) | 43-08-12-300-210.000-023 |
| KOSCIUSKO COUNTY ASSESSOR, |) | |
| |) | |
| |) | |
| Respondent. |) | 2014, 2015, 2016 Assessment |

Appeal from the Final Determination of the
Kosciusko County Property Tax Assessment Board of Appeals

FINAL DETERMINATION

The Indiana Board of Tax Review (the “Board”) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Petitioner, Joseph R. Carracci 1998 Trust (“Carracci”) appeals the 2014, 2015, 2016 assessments on a residential property. The Respondent, Kosciusko County Assessor (“Assessor”) presents evidence supporting the assessment. The Petitioner fails to rebut that evidence.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. The property consists of a three-story lake-house located on Webster Lake in North Webster.
3. Carracci appealed the assessments to the Kosciusko County Property Tax Assessment Board of Appeals (the “PTABOA”). The PTABOA determined the property should be assessed for 2014 at \$245,000 (\$60,500 land, \$184,500 improvements); for 2015 at \$254,200 (\$60,500 land, \$193,700 improvements); for 2016 at \$255,600 (\$60,500 land, \$195,100 improvements). Carracci appealed to the Board.
4. Assessor opted out of the small claims provisions.
5. This matter was heard on November 22, 2017, in Indianapolis with Commissioner Jonathan Elrod designated as the Administrative Law Judge (the “ALJ”).
6. Prior to the hearing, Assessor sought an interior physical inspection of the property. Carracci objected and filed several documents in support of his opposition citing court cases from other jurisdictions. By order, the Board granted the Assessor’s motion to compel the inspection. Carracci refused to permit an inspection and Assessor moved for sanctions. Assessor sought the sanction of dismissal. Testimony on the matter was taken at the hearing. Carracci cited only his rights under the 4th Amendment of the U.S.

Constitution as grounds for his objection to the inspection. Assessor's appraiser, Iverson Grove, noted that his opinion of value was based on assumptions regarding the interior of the property. The ALJ granted a sanction in favor of Assessor preventing Carracci from presenting evidence regarding the description or quality of the interior of the property. The Board upholds the ALJ's determination. Furthermore, the Board notes that the record provides ample evidence that Assessor's case was unfairly hindered by its inability to inspect the premises and determine the amount of finished living area in the lower floor, third floor, and breezeway. The Board finds that dismissal would have been a reasonable sanction, had the ALJ granted it.

7. Prior to the hearing, both parties, at different times, requested continuances. At the hearing, both parties stated they wished to have the matter heard on that date. Carracci requested that the 2017 appeal be heard as well. Assessor did not consent to a waiver of the notice provisions and the 2017 appeal was not heard.
8. The hearing was conducted on the record. The Board did not conduct a physical inspection.
9. Joseph Carracci and Iverson Grove, an appraiser, were sworn in and testified under oath. Jack C. Birch appeared as counsel on behalf of the Assessor, Susan Engelberth, who was present in person.
10. The Petitioner presented the following exhibits:
 - Petitioner Exhibit .1 – Forms 131 for 2014-2017
 - Petitioner Exhibit 1 – IBTR Determinations for 2012
 - Petitioner Exhibit 1A – IBTR Determinations for 2013
 - Petitioner Exhibit 2 – Photographs and PRCs for the property
 - Petitioner Exhibit 2A – Photographs and PRCs for 144 EMS W17 Ln.
 - Petitioner Exhibit 2A1 – Photographs and PRCs for 148 EMS W17 Ln.
 - Petitioner Exhibit 2A2 – Photographs and PRCs for 166 EMS W17 Ln.
 - Petitioner Exhibit 2B – Photographs and PRCs for 8 EMS W23 Ln.
 - Petitioner Exhibit 2C – Photographs and PRCs for 77 EMS W26 Ln.
 - Petitioner Exhibit 2D – Photographs and PRCs for 134 EMS W17 Ln.
 - Petitioner Exhibit 2E – Photographs and PRCs for 138 EMS W17 Ln.

Petitioner Exhibit 2F – Photographs and PRCs for 57 EMS W22 Ln.
Petitioner Exhibit 3 – Chart of property assessments
Petitioner Exhibit 4 – Real Estate Contract
Petitioner Exhibit 4A – Ledger of construction expenses
Petitioner Exhibit 4B – Construction contracts and bills¹

11. The Respondent presented the following exhibits:

Respondent Exhibit A – Appraisal Report
Respondent Exhibit B – PRC for subject property
Respondent Exhibit C – PRC for subject property
Respondent Exhibit D – PRC for subject property

12. The Board also recognizes as part of the record of proceedings the Forms 131, Notices of Hearing, hearing sign-in sheet, the digital recordings of the hearings, and all motions and responses filed with the Board prior to the hearing.

OBJECTIONS

13. Carracci objected to *Resp. Ex's. B-D* (the subject property's PRCs) as inaccurate because he believed information was "fraudulently" changed at some point. The ALJ overruled the objection. The Board affirms and notes Carracci later indicated he wanted the Board to consider the PRCs.

14. Carracci objected to *Resp. Ex. A* for the inclusion of a PRC. He also objected to two photographs of the exterior of the house that he claimed were obtained fraudulently by trespassing. The ALJ overruled the objection, and the Board finds the photographs are relevant and admissible.

15. Assessor objected to questions regarding the standard for the calculation of finished square footage of an attic as excluded under the sanctions. The ALJ overruled the

¹ In addition, the Petitioner submitted a brief or summary of testimony. The Petitioner also presented a motion to "suppress/dismiss" relating to the 2013 appeal.

objection as it was only a hypothetical and did not elicit testimony as to the actual interior of the property.

16. Assessor objected to the affidavit of Gregory Schenkel regarding the square footage of the subject property's 3rd floor interior. The ALJ ruled that the evidence would not be considered because it is excluded under the sanction. The Board affirms.
17. Carracci attempted to introduce a "Motion to Suppress/Dismiss Respondents Evidence" with a caption for a prior appeal, and recounting facts from a prior appeal. The ALJ denied the motion and the Board affirms.

BURDEN OF PROOF

18. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule in I.C. § 6-1.1-15-17.2.
19. First, I.C. § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." I.C. § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." I.C. § 6-1.1-15-17.2(b).
20. Second, I.C. § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross

assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach.

21. Assessor concedes that she has the burden for 2014. The burden for the latter years depends on the resolution of the prior year.

ASSESSOR’S CONTENTIONS

22. Assessor contends the assessed value is correct and equitable. Assessor presented the following evidence in support of the assessment:

- A. Iverson Grove (“Grove”) is an MAI, Indiana certified general appraiser. He sits on the Elkhart County Property Tax Assessment Board of Appeals and is familiar with Indiana’s property tax rules. Grove testified his opinion of the property’s value is in conformity with USPAP standards. He appraised the property’s fee simple true tax value at its value-in-use. He determined its value-in-use was the same as its market value, which he describes as its value-in-exchange.² The property’s highest and best use is its current use as residential property. *Grove testimony.*

- B. Grove valued the property as of the relevant assessment dates: March 1, 2014, March 1, 2015, and January 1, 2016. He considered the relevant market to be properties on Webster Lake. He found the demand for lake access was strong. There were older

² Grove repeatedly misstated that Indiana’s true tax value is “value-in-use” and not “market value-in-use.” Because we agree that the market value-in-use of the property at its current use is equal to its value-in-exchange, we find this troubling but not fatal to his testimony.

homes, but many had been razed or extensively remodeled in recent years. *Grove testimony; Resp. Ex. A.*

- C. The property is waterfront, and Grove noted that its value should be calculated on a front foot basis. Grove testified that waterfront properties on this type of lake must be classified as true “lake-front” or “channel-front” depending on whether the site enjoys an unobstructed view of the lake. Lake-front properties command significantly higher land values. While the property is not technically on a channel, the view is obstructed by an inlet and a nearby island. For these reasons, Grove classifies the property as channel and values it accordingly. *Grove testimony; Resp. Ex. A.*
- D. The property consists of the original lake-house, erected in 1965, which is 900 s/f and located at the rear of the property and on grade with the street. It has been improved over the years. Attached by a breezeway is the much larger 3-story home erected in 1999. The lower floor is 1,393 s/f, and listed as unfinished. While Grove considered it atypical for it to be completely unfinished, there is a garage door leading to the lake, likely for boat storage, which is probably unfinished. Because Grove was denied access, he presumed all of the lower floor was unfinished. The middle floor is 1,393 s/f, fully finished, and at grade with the original lake-house. The upper floor is 1,041 s/f, fully finished, and has a portion that is open for a cathedral ceiling above the floor below. The breezeway is 160 s/f, and Grove presumed it was unfinished, but only because he was denied inspection. *Grove testimony; Resp. Ex. A.*
- E. Grove began with an analysis of lake-front and channel land sales. All of the sales were for properties that were either vacant at the time of sale, or any improvements were soon razed for new improvements.³ He considered data across 20 years. He developed separate rates of change in land values for lake-front and channel properties. Grove determined front-foot rates for both types, which he used in

³ Grove noted that he did not adjust the sales prices for the costs of demolition, which would have increased the land values.

valuing the property and in making adjustments to lake-front comparable sales.
Grove testimony; Resp. Ex. A.

- F. Grove looked only for multi-level properties in his comparable sales. He found sufficient sales on Webster Lake. His analysis considered two comparison calculations and grids. The first comparison grid isolated the land values to determine the value per s/f of each comparable's improvement alone. The second comparison grid adjusted the land value of each comparable to reflect the property's land, and determine a value per s/f as a whole. Except in regard to land value adjustments, Grove engaged in a qualitative analysis, considering which sales were overall most comparable. *Grove testimony; Resp. Ex. A.*
- G. For 2014, Grove considered four comparable sales during 2013. He considered the property most similar to comp 3, and valued the property at \$273,000, which was the lower of the two amounts indicated in his grids. *Grove testimony; Resp. Ex. A.*
- H. For 2015, Grove considered four comparable sales during 2014. He considered the property be between comps 1 and 2, and valued the property at \$276,000, which was the lower of the two amounts indicated in his grids. *Grove testimony; Resp. Ex. A.*
- I. For 2016, Grove considered four comparable sales during 2015. He considered the property most similar to comp 4, and valued the property at \$306,000, which was the lower of the two amounts indicated in his grids. *Grove testimony; Resp. Ex. A.*

CARRACCI'S CONTENTIONS

23. Carracci contends that the assessed value is incorrect for a number of reasons. Carracci presented the following evidence in support of his contentions:

- A. Carracci spent a significant portion of his testimony airing his grievances regarding various assessing officials dating back to a scheduled physical inspection in 2002, over 15 years earlier, when he called the police on a township assessing official. He made a number of serious allegations of criminal misconduct such as fraud or forgery mostly relating to the data on PRCs for his and several other properties. *Carracci testimony*.
- B. On the issue of true tax value, Carracci suggests several different values. At one point, he contended that the assessed value should be \$155,600. *Carracci Br. at 1*. Carracci also argued that only an annualized adjustment should be applied to the improvements for each year, and offered calculations of that amount. *Carracci testimony; Pet. Ex. 3*. He contended that the IBTR decisions for the 2012 and 2013 tax years foreclose the Respondent from adjusting the 2014 and 2015 values except for annual adjustments. Based on this, he requested a value of \$152,985. *Pet. Br. at 7-9*.
- C. He contended his property should be \$150,800 based on the 2013 sale price of a nearby lake-house, Lot 144 (144 EMS W17 Ln.). He stated the properties are nearly identical in style, age, and construction. Lot 144 sold for \$258,000 in 2012, and he subtracted the difference between the subject property's land assessment and Lot 144's land assessment, which is \$95,600, to reach \$150,800. *Carracci testimony; Pet. Br. at 3; Pet. Ex. 2A*.
- D. Another estimate of value was based on a 2015 sale of a large lake-house (8 EMS W23 Ln.) on Lake Backwater, which is a "shallow and very weedy" lake connected to Lake Webster, that sold for \$140,000. He noted that it was assessed at \$205,905 in 2015. *Pet. Br.; Pet. Ex. 2B*. He also pointed to a channel lake-house (77 EMS W26 Ln.) that he claims sold "off market" in 2015 for \$149,900. He noted that it was assessed for \$241,900 in 2016. Carracci evidently created a comparison grid, from

- which he arrived at an “adjusted selling price” for his property of \$142,000.⁴
Carracci testimony; Pet. Br.; Pet. Ex. 2C.
- E. Carracci also presented a cost approach suggesting a total investment of \$143,036 in the property dating back to 1980. *Carracci testimony; Pet. Br.; Pet. Ex. 4; 4A; 4B.*
- F. Carracci presented evidence that three other properties in the “immediate area” sold in 2014 or 2015 for \$70,000 to \$80,000 below their assessed values. *Pet. Br.; Pet. Ex’s. 2D; 2E; 2F.*
- G. Carracci contended that it was “illegal” for the Respondent to change the calculation of the property’s third floor finished area.
- H. Carracci also challenged Grove’s appraisal. He suggested that an adjustment should be made for properties with sewers when compared to the subject property which has a septic tank. He noted that most of the comparable properties were lake-front, and challenged whether the improvements should reflect a premium value over channel properties in addition to the land. He also pointed out that all of the 2014 comps were lake-front. Finally, he challenged Grove’s failure to include the sale of Lot 144, which he argued was extremely comparable. *Carracci testimony.*

ANALYSIS

24. For 2012, real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2(incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally

⁴ His brief references a “Pet. Ex. #2g” but no such exhibit was tendered. *Carracci Br. at 4.*

accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment may be presented, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.

25. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2012, assessment, the valuation date is March 1, 2012. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
26. The only issue before the Board is the true tax value of the property. As noted above, Assessor has the initial burden. Because Assessor presented probative evidence for all three years, the Board need not further address the burden-shifting statute.
27. The testimony of Grove establishes an expert, USPAP compliant opinion of value in conformity with generally accepted appraisal practices. The Board finds his testimony is probative and persuasive evidence of the value of the property for all three years on appeal, and that evidence confirms the assessed values determined by the PTABOA. He gave Carracci the benefit of the doubt regarding the extent of finished space. He carefully considered the channel-front nature of the property and considered two calculations to properly adjust lake-front comps, so as to appropriately value the property.
28. Carracci challenged the failure of Grove to account for sewers versus septic. Grove testified that he believed it would make no difference because the subject property's septic system was within its life expectancy. Carracci also challenged Grove's use of lake-front comps without adjusting the improvements. Grove testified that the improvements should not be adjusted. The Board finds no reason to doubt Mr. Grove's expert opinion, and Carracci

failed to direct us to any conflicting authority on these issues. Finally, Carracci challenges the failure to include the comparable sale of a nearby property at 144 EMS W17 Ln. According to Carracci, the property sold in 2012. Grove testified he only looked for properties that sold in 2013 and did not look beyond 2013 because he had sufficient sales. But even if Grove should have included Lot 144 in his analysis, the sale is consistent with his opinion. The omission of a 2012 \$258,000 comp does not cast doubt on the 2013 assessment of \$245,000.

29. While another expert might have cast doubt on Grove's adjustments to lake-front properties, that evidence is not in the record. The Board finds that Assessor has met the burden of proof and established that the true tax value is at least the amounts concluded by the PTABOA. Assessor declined to seek an increase in the assessment.
30. The burden now shifts to Carracci to provide more persuasive evidence of the correct value of the property. "The taxpayer must show that his suggested value accurately reflects the property's true market value-in-use (and, consequently, that the assessor's assessed value does not)." *Grabbe v. Duff*, 1 N.E.3d 226, 228 (Ind. Tax Ct. 2013).
31. At the outset, the Board notes that Carracci seems to misunderstand the role of the Board. The Board does not regulate the mass appraisal practices of local assessment officials. It has no authority to direct their internal affairs or processes. The Board can only consider the property and tax years on appeal and, in a valuation dispute, decide whether the assessor got the value correct. Therefore, much of Carracci's testimony was irrelevant to the issue at hand. However, the Board notes that none of Carracci's testimony established fraud, forgery, or any other illegal conduct on the part of Assessor. Carracci's impassioned accusations of criminal misconduct reflect poorly on his credibility. Furthermore, the Board cautions Carracci that he will not be permitted to use future Board hearings to recount 15 years of antipathy toward local officials or previously litigated tax years.

32. Turning to the evidence, Carracci's testimony is insufficient to overcome Assessor's case. The Board can rely on an opinion of value only if it is based on reliable and quantifiable evidence.

Indiana law makes clear that the probative value of an opinion depends on whether the proponent of that opinion has shown that he adhered to generally recognized appraisal principles in formulating the opinion. This requirement remains the same whether an assessing official, an appraiser, or a taxpayer is the proponent of the opinion.

Grabbe, 1 N.E.3rd at 231 (internal citations omitted). Carracci does not present the type of sales comparison analysis necessary to overcome Grove's expert opinion. *See Long*, 821 N.E.2d at 470. While he points to a number of comparable sales, he fails to sufficiently adjust the differences between the properties.

33. Carracci put his greatest reliance on the 2012 sale of Lot 144 (144 EMS W17 Ln), which he claims is a very similar house in terms of age, size, style, and construction, and located "two doors down." Lot 144 is clearly the second house to the northeast from the subject property (Lot 158). As Carracci admitted, the view from Lot 144 is similarly obstructed by the island and is located in a weedy marsh area. *See Carracci testimony; Resp. Ex. A at 7-8*. The PRCs reveal that Lot 144 has 50 front feet compared to the subject property's 62 front feet. The narrow parcel forced the owners of Lot 144 to build perpendicular to the lake, while the subject property's parcel was wide enough to build a similar-sized home horizontal with the lake, affording more windows and deck areas facing the lake. The evidence is clear that the subject property's lot is superior to Lot 144. And yet, Carracci would have the Board accept that the \$258,000 sale price for Lot 144 should be adjusted downward by \$95,600 to account for the difference in the land values relative to the subject property. *See Pet. Br. at 3*. This defies logic and the most basic of appraisal principles. The Board need not further untangle Carracci's attempts at sales comparison approaches.
34. Carracci also attempted a cost approach to value. "The cost approach attempts to estimate the value of the land as if vacant and then adds the depreciated cost new of the

improvements to arrive at a total estimate of value.” *State Bd. of Tax Comm'rs v. Garcia*, 766 N.E.2d 341, 343 n.2 (Ind. 2002) (internal quotations omitted). All of Carracci’s construction costs are at least 15 years out of date. He did not present the construction costs, as of the relevant tax year, depreciated back to the construction date, and he has failed to present a probative cost valuation.

35. Finally, Carracci made numerous arguments about Assessor’s use of influence factors, updates to property record cards, and changes for annual adjustments and general reassessments.

Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use. As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use.

Westfield Golf Practice Ctr., LLC v. Wash. Twp. Assessor, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). These are simply challenges regarding methodology, and fail to establish the market value-in-use of the property as a whole. Carracci’s focus on measurements and trending factors misses the forest for the trees. Grove’s testimony persuades the Board that the true tax value, and likely selling price, of Carracci’s lake-house is reflected in the PTABOA assessment. Whatever criticisms Carracci may have with the assessment process, and whatever success he may have had in prior appeals, fairness does not permit Carracci to be assessed at \$100,000 below the true tax value of his summer home.

CONCLUSION

36. Assessor established a prima facie case that the assessed value of the subject parcel is correct, and Carracci failed to rebut that evidence.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the correct assessed values are those set forth by the PTABOA: \$245,000 for 2014, \$254,200 for 2015, and \$255,600 for 2016.

ISSUED: December 7, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.